

STATE OF UTAH CONTRACT AMENDMENT

AMENDMENT #	To CONTRACT# AR1480	
TO BE ATTACHED T of Utah, WSCA Admir referred to as CONTRA	O AND MADE A PART OF the above numbered contract by and between the State istrator referred to as STATE and, Aprisma Management Technologies, Inc ACTOR.	
THE PARTIES AGR	EE TO AMEND THE CONTRACT AS FOLLOWS:	
1. Contract period:	May 30, 2003 (original starting date)	
	May 31, 2004 (current ending date)	
	May 31, 2006 new ending date	
2. Contract amount:	(current contract amount)	
	(amendment amount)	
	-0- new contract amount (add current amount to amendment amount)	
3. Other changes: (at	tach other sheets if necessary):	
None		
4. Effective Date of A	nendment: As soon as both parties sign.	
All other conditions and	d terms in the original contract and previous amendments remain the same.	
IN WITNESS WHERE	OF, the parties sign and cause the amendment to be executed.	
CONTRACTOR	STATE STATE MAY 07	2004
Contractor's signature Type or Print Name and	Date Douglas G. Richins	•
(DP 4 Pavision 1/5/2000)		

STATE OF UTAH STATEWIDE CONTRACT AR-1480

1.	CONTRACTING PARTIES: This Statewide Contract is between the Division of Purchasing and Gen Services , an agency of the State of Utah, and the following CONTRACTOR:			
	Aprisma Management Technologies, Inc Name	LEGAL STATUS OF CONTRACTOR [] Sole Proprietor		
	273 Corporate Drive Address	[] Non-Profit Corporation [X] For-Profit Corporation [] Partnership [] Government Agency		
	Portsmouth, NH 03801 - 6807 City State Zip	[] Government Agency		
	Federal Tax ID# <u>02-0513811</u> Vendor #	Commodity Codes: <u>20464</u> , <u>20621</u> , <u>20623</u>		
	Vendor Contact Person: Michael Olson	Vendor Phone #: <u>512-288-5356</u>		
	Vendor Fax #: 603-334-2878	Vendor email address: molson@aprisma.com		
2.	GENERAL PURPOSE OF CONTRACT: The general purpose of this Contract is to provide: Data Communications Equipment and Associated OEM Maintenance & Training			
3.	CONTRACT PERIOD: Effective date <u>May 30, 2003</u> Termination date <u>May 31, 2004</u> unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal option: <u>Renewable for one or two year terms up to four additional years</u> .			
4.	PRICING AS PER ATTACHMENT A (Addendum 1) PAYMENT TERMS: Net 30 DAYS REQUIRED FOR DELIVERY: 5-10 business day MINIMUM ORDER: N/A FREIGHT TERMS: F.O.B. Destination, Freight Prepaid	vs ARO		
5.	ATTACHMENT A: Addendum 1 ATTACHMENT B: WSCA Standard Terms and Conditions ATTACHMENT C: Spectrum Software License Agreement; Spectrum Service and Maintenance Agreement Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.			
6.	 DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED: a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract. b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to R LW1907 dated 07-17-01. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. 			
	CONTRACTOR	STATE OF UTAH		
	Sold My	Detchins		
	Jacquie Arthur, CFO	Douglas G. Richins Director, Division of Purchasing		
	Type or Print Name and Title	FESSION WISS PROPERTY		
	8-7-03	AUG 1 4 2003		
	Date	Date		

ATTACHMENT A ADDENDUM 1

Data Communications Equipment, and associated OEM Maintenance and Training.				
The State of Utah is acting as the Lead State for the procurement process resulting				
STATE, and Aprisma Management Technologies, Inc.	referred to as Contractor.			
This Addendum serves to clarify terms and conditions of the contract between the	State of Utah, referred to as			

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: N/A
Switches: N/A
LAN/WAN Wireless: N/A
CSU/DSU: Spectrum

B. State of Utah/WSCA Contract Manager

Debbie Gundersen State of Utah Division of Purchasing and General Services State Office Building, Capitol Hill Room 3150 Salt Lake City, UT 84114-1061

email: dgundersen@utah.gov

Voice: (801) 538-3150 Fax: (801) 538-3882

C. Remittance Address

Aprisma Management Technologies, Inc 273 Corporate Drive Portsmouth, NH 03801

D. Special Terms and Conditions

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence

The order of precedence for the contract terms will be as follows:

- 1. Addendum 1
- 2. WSCA Terms and Conditions
- 3. Contractor's Proposal Response to RFP LW1907
- 4. RFP LW1907

2. Included Documents

The documents listed in Number 1 are included in the contract. It is agreed that any reference to the "Entire Agreement" includes these documents.

3. Public Information

The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.

4. Arbitration

The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.

5. Contract Period

The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.

6. <u>Governing Law</u>

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

7. Revisions to the WSCA Standard Terms and Conditions

The WSCA Standard Terms and Conditions will be revised as follows:

A. Item 6 SAMPLES, will have the following added to the end of this clause:

"Aprisma understands that should samples be required, they will be furnished free of charge. Any samples or evaluation copies of the software products offered by Aprisma will be provided subject to negotiation of Aprisma's evaluation agreement."

B. Item 10 **PATENTS, COPYRIGHTS, ETC.** is replaced with the following:

"Aprisma shall defend, at Aprisma's expense, any claim brought against WSCA, the participating states and the purchasing entities alleging that any product acquired or licensed from Aprisma infringes a US patent, copyright, or mask work right (hereinafter a "Claim"). Aprisma shall pay all costs and damages awarded or agreed to in settlement, provided that the participating state and/or WSCA gave Aprisma prompt written notice of the Claim, reasonable assistance and sole authority to defend or settle the Claim. Aprisma shall obtain for the participating state the right to continue using the product, or replace or modify the product so it becomes non-infringing. If such remedies are not reasonably available, Aprisma shall grant to the participating state a credit for the product normally depreciated and have the participating state return the product to Aprisma. Aprisma shall not have any liability if the alleged infringement is based upon the use, license or sale of the product in combination with other products, including software not furnished by Aprisma. This is Aprisma's entire liability and the participating

states exclusive remedy for intellectual property Claims brought against a participating state and/or WSCA.

All licensed software is subject to its End-User License Agreement, provided as an Attachment hereto, as amended from time to time in writing and approved by both parties. WSCA and its participating states agree not to modify the licensed software for decompile or disassemble the licensed software.

C. Item 22 WARRANTY is replaced with the following:

"Aprisma warrants that the media embodying the Licensed Software shall be free from defects for a period of one year from the date of the software installation for a particular Licensed Software. Licensee's sole remedy for breach of the warranty shall, at the option of Aprisma, be the repair or replacement of the media embodying the Licensed Software. Aprisma warrants to the Licensee that the Licensed Software, excluding any Beta software, as provided shall operate in accordance with the published software release notes as contained in the generally released user version of the Licensed software for a period of ninety (90) days from the date of issuance of extraction keys for the Licensed Software.

IN NO EVENT SHALL APRISMA OR ITS AFFILIATES, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, WHETHER CLAIMED BY REASON OF BREACH OF WARRANTY, IN TORT OR OTHERWISE, AND WITHOUT REGARD TO THE FORM OF ACTION IN WHICH SUCH CLAIM IS MADE."

- D. Item 27 **INSPECTIONS** will have the following added to the end of this clause: "Unless Aprisma is notified in writing of non-acceptance of products within thirty (30) days after shipment, the products shall be deemed accepted."
- E. Item 37 **E-RATE COMPLIANCE** will have the following added to the end of this clause: "The software products being proposed by Aprisma are not eligible for e-rate benefits according to the e-rate guidelines established by the FCC."

Any additional changes to the WSCA Standard Terms and Conditions listed by the Contractor in the Response to the RFP will be null and void.

8. Revisions to Contractor's Response to the RFP

Note: The changes below may be listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.

The Contractor's Response to the RFP will be revised as follows:

A. The following will apply to all agreements that are included below and to agreements in Aprisma's response to the RFP:

- "1. Customer (or "You") shall be defined as follows: Each State agency and each political subdivision, as a State Entity, that uses these services will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges and fees. The Contractor will apply the charges and responsibilities to each State Entity individually.
- 2. The governing law for all agreements will be subject to Item D.6. above."

B. The following changes will be made to the Aprisma Service and Maintenance Agreement:

1. Item 4. Customer Site Manager

Revise the second sentence as follows:

"The Site Manager must perform all reasonable procedures specified by the Aprisma Technical Support Engineers..."

Revise the third sentence as follows:

"The Site Manager will have general technical skills and will assist the Aprisma Technical Support Engineers in both the diagnosis of the Licensed Software malfunctions and the successful replacement of the Licensed Software."

2. Item 9. Payment Terms

Revise the second sentence as follows:

"Customer shall pay a one percent (1%) per month finance charge ..."

Delete the last sentence of this Item 9.

3. Item 11. Limitations of Warranty and Liability

Revise the first sentence as follows:

"THE OBLIGATIONS AND LIABILITIES OF APRISMA AND ITS AFFILIATES AS SET FORTH IN THE CONTRACT ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS OR REMEDIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OBLIGATION, LIABILITY, CLAIM, OR REMEDY (COLLECTIVELY, 'CLAIMS') IN CONTRACT OR TORT, WHETHER OR NOT ARISING FROM NEGLIGENCE OF APRISMA, ACTUAL OR IMPUTED."

Revise the last sentence in the term as follows:

"Subject to 7.B. in this Attachment A **PATENTS, COPYRIGHTS, ETC.**, NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE TOTAL LIABILITY OF APRISMA AND ITS AFFILIATES UNDER THIS AGREEMENT IS LIMITED TO, AT APRISMA'S OPTION, APRISMA'S USE OF REASONABLE EFFORTS TO REPAIR OR REPLACE THE AFFECTED PRODUCT(S) OR PART THEREOF, OR THE REFUND OF A MAXIMUM OF ONE YEAR'S SUPPORT SERVICES FEE FOR THE AFFECTED PRODUCT(S) PLUS THE COST OF THE SOFTWARE REDUCED BY STANDARD DEPRECIATION."

4. Item 12. Termination and Discontinuation

Under this item 12, the termination of "This Agreement" will apply to services for the specific location to which the applicable issues listed in the term apply. The termination will not apply to terminating the WSCA Master Agreement.

Item 12.1, the first and second sentence are revised as follows:

"This Agreement may be terminated by Aprisma at any time upon thirty (30)calendar days' prior written notice if, in Aprisma's determination, Customer detrimentally affects Aprisma's ability to adequately support Customer by refusing or neglecting to implement Aprisma's reasonable recommendations for corrective action to resolve any on-going problem, or Customer refuses to cause installation of Updates within a reasonable time. In such event, previously paid Support Services fees will be prorated and the remaining amount will be refunded for the canceled period."

Item 12.2, the first sentence is revised as follows:

"This Agreement may be terminated by Aprisma, upon thirty (30) calendar days' prior written notice, in the event Customer does not pay applicable Support Services fees to Aprisma in full within thirty (30) days of Aprisma's invoice."

Item 12.3 is revised as follows:

"In the event Customer has not paid the applicable Support Service fees to Aprisma, the Support Service coverage for the Licensed Software shall be suspended until such time as payment is received by Aprisma."

5. Item 15.1 Entire Agreement

This term will be superceded by D.1. Order of Precedence and D.2. Included Documents above.

6. Item 15.2 Assignment

The fourth sentence is revised as follows:

"Aprisma may assign this Agreement with Customer's consent, which will not be unreasonable withheld, to any Affiliate..."

The following sentence will be added to the end of this term:

"If Aprisma subcontracts (other than to Aprisma authorized resellers of the products) any of its obligations, it will be transparent to the Customer (State). Payments will be sent in Aprisma's name or to an authorized reseller of the products."

C. The following changes will be made to **Exhibit A of the Aprisma Service and Maintenance** Agreement:

- 1. Item 2.3.2 is revised as follows:
- "Aprisma shall use reasonable efforts to resolve Severity 1 Errors within one (1) working day of receipt of notice of such Error."
- 2. Item 2.3.3 is revised as follows:
- "Aprisma shall use reasonable efforts to resolve Severity 2 Errors within three (3) working days of receipt of notice of such Error."
- 3. Item 2.3, the last sentence is revised as follow:
- "The prescribed Error correction periods above may be extended by one day by verbal agreement or may be extended further by mutual written agreement of the Parties..."
- 4. Item 2.4, the second sentence is revised as follows:
- "Customer will be billed at the contract rates for onsite support services and will be billed for reasonable travel expenses, not to exceed the State of Utah travel guidelines. Customer will not be charged for onsite support services for: (1) the initial thirty (30) days of the software purchase if the installation was performed by Aprisma and if the problem cannot be resolved remotely by the Technical Response Center; or (2) support services which were caused from significant defects in the software product within ninety (90) days of the software purchase.

When applicable, the charge for onsite support services will be: \$2000 per day. This price will remain firm for the initial two years of the contract."

5. Item 3, the first sentence is revised as follows:

"Premium Technical Support shall mean ...and will be available for support Monday through Friday during the normal business hours of 8:00 AM to 5:00 PM in the standard time period of the State entity using the Premium Technical Support."

D. The following changes will be made to the Aprisma Software License Agreement:

1. In the first paragraph of the Agreement, the fourth sentence is revised as follows:

"By clicking on the 'Accept' button at the end of the Agreement, You agree to abide by and to be legally bound by the terms and conditions of the Agreement as revised and included in the State of Utah Contract AR1480, including the disclaimers of warranties and limitations of liability. Please read the following Agreement carefully and indicate Your acceptance by clicking on the 'Accept' button at the bottom. Aprisma and You agree the Agreement approved by the parties in writing will replace and supercede the Agreement that is included with the Software purchase and will be considered the 'Agreement' for all references in this document. When You click on the 'Accept' button, You will be agreeing to the Agreement as indicated in this paragraph."

2. Item 2, Term

The third sentence is deleted in its entirety. [Note: See the revisions to Item 7 of the Agreement below (under Nos. 6-8).]

- 3. Item 4.2, this term is deleted in its entirety and replaced with the following:
- "You therefore agree that in the event of a breach of this Agreement, Aprisma shall be entitled to injunctive relief to restrain such breach, in addition to any other remedies available to Aprisma."
- 4. Item 5.3, (e) is revised as follows:
- "(e) knowingly use any incompatible computer programs with the Software;"
- 5. Item 5.4 the first sentence will have the following added to the end of the sentence:
- "...other governmental charges, as long as the correct contracted prices are listed on the invoice; however, You may deduct taxes if a tax exempt form is filed with Aprisma."

The second sentence is deleted in its entirety.

6. Item 7, the first sentence is revised as follows:

"In the event that You fail to keep, observe, or perform any obligation under this Agreement, including a failure to pay any sums within 30 days of the due date to Aprisma, Aprisma may, in addition to any other remedies it may have under law, terminate this Agreement between Aprisma and You with a 15 day written notice of Your breach of this Agreement. If You rectify the breach within the 15 days, then the Agreement will continue."

7. Item 7.1, the first sentence is revised as follows:

"Within 30 days after termination of this Agreement, You shall return to Aprisma the original and any copies of the Software and certify in writing that through Your best efforts and to the best of Your knowledge the original and all copies of the terminated or discontinued Software have been returned to Aprisma, except for one archival copy of the Software to be used for archival purposes only."

- 8. Item 7.2 is revised as follows:
- "Aprisma may terminate this Agreement with a 15 day written notice upon the occurrence of any of the following events:
- ... or (d) Your becoming subject to an administrative order or ceasing to carry on business."
- 9. Item 10.1 the first sentence is revised as follows:

"The only warranty Aprisma makes to You in connection with this License of the Software is that: (a) if the media on which the Software is recorded is defective; or (b) if the software will not perform under normal use, then it will be replaced without charge, if the media is returned to Aprisma or the dealer from whom it was obtained within ninety (90) days. Aprisma affirms that the Software will substantially conform to its published specifications for ninety (90) days of the delivery of the Software."

10. Item 10.3, in the second sentence "Non-infringement" is deleted.

The last sentence is revised as follows:

"SUBJECT TO SECTION 10.1 as revised, YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE SOFTWARE."

- 11. Item 10.5, is revised as follows:
- "...INCLUDING LOSS OF DATA, REVENUE, OR PROFITS, EVEN IF APRISMA OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES."
- 12. Item 11 is revised as follows:

"You shall defend, indemnify and hold harmless Aprisma, its Affiliates, and their licensors, officers, directors, agents and employees from any liability, or damage, (including reasonable attorneys' fees) arising out of (i) a breach of Your obligations, representations, warranties, or covenants herein; (ii) Your re-export of the Software outside the country to which Aprisma shipped the Software and in which You do business."

13. Item 14.1, the second sentence is revised as follows:

"Aprisma may assign this Agreement with Customer's consent, which will not be unreasonable withheld to any Affiliate..."

The following sentence will be added to the end of this term:

"If Aprisma subcontracts (other than to Aprisma authorized resellers of the products) any of its obligations, it will be transparent to You. Payments will be sent in Aprisma's name or to an authorized reseller of the products."

14. Item 14.4 will be revised as follows:

Attachment A (this attachment), Items D.1. Order of Precedence and D.2. Included Documents above will have precedence over Item 14.4.

9. State of Utah Only Requirement

Attachment C from the RFP will apply to the State of Utah only. This term is as follows:

E-PROCUREMENT: The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful vendor must agree to terms as described in the following subparagraphs:

- a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement vendor and (ii) terminate the State contract and award the contract to the next acceptable bidder.
- b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

E. Contractor Requirements

1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.

2. Serving Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

4. <u>Usage Reporting Requirement</u>

Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

5. <u>Change in Contractor Representatives</u>

The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.

6. Website Development and Maintenance

Contractor must maintain said website and keep the information current and correct on a timely basis.

7. Rollout and Marketing

Contractor may conduct a marketing effort as described in Contractor's proposal.

8. Right to Publish

Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.

9. <u>Contractor's Scope of Equipment and Services</u>

Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.

10. E-Rate Requirement

Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.

Freight Terms of Sale F.O.B. Destination, Freight Prepaid

Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period

Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are guaranteed for two years.

13. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied

Manufacturer's price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

F. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

- 1. Discounts of Manufacturers Price List
 - a. Pricing Discounts

Aprisma Management Technologies has extended a 25% discount on Spectrum products and 10% discount on Opticom Products, Metrix Products and Training from list pricing towards all products.

b. Discount Structures Based on Volume (per order or progressive cumulative volume)

Aprisma Management Technologies has offered a deeply discounted price to WSCA based on anticipated purchases and volume. Additional discount will not be extended.

c. WSCA Member-State coverage

Aprisma Management Technologies' direct sales force, value added partners, and system integrators are capable of providing service to the entire WSCA region.

2. Resolution of Customer Problems

Aprisma Management Technologies offers the following assistance to resolve "Customer Problems":

- Aprisma Technical Assistance Center (ATAC) 1-877-428-6324
- Field Engineers capable of going on site
- Release Notes
- Troubleshooting Guide
- Software Releases
- Technical Bulletins
- Technical Tips
- Proactive Email Notifier

3. Escalation Procedures

Aprisma Management Technologies is providing an overview of our Escalation Procedures. These procedures have been modified from our initial response and can also be reviewed at the following URL:

http://www.aprisma.com/support/secure/atac-escalation.shtml

The following defines the escalation guidelines Aprisma Management Technologies will follow to ensure consistent processing of reported problems or inquiries.

- Customer calls the Aprisma Technical Assistance Center (ATAC).
- An Inquiry Number is assigned to the initial call.
- For customers calling the ATAC for informational purposes, their questions will be answered and upon approval by customer, the inquiry is closed.
- If the customer requires troubleshooting assistance, the Technical Support Engineer (TSE) will gather all necessary information to properly diagnose the inquiry.
- Once the symptoms have been identified, the TSE will categorize the inquiry according to Aprisma's Severity Guidelines.
- The TSE will adhere to the assigned severity definitions to ensure consistent handling of the inquiry.
- The TSE will consult Internal Team members for next course of action pertaining to inquiry.
- The TSE will work the inquiry with Internal Team members and Product Support, as necessary to resolve the inquiry.
- Escalation to Product Support occurs when the TSE determines the inquiry requires a Product Support Engineer to further investigate the inquiry.
- Product Support will contact the customer to provide the contact name of the assigned Product Support Engineer.
- Product Support will try to recreate the problem in their lab environment.
- Product Support will work with Engineering through resolution of the inquiry and relay information back to customer and all parties involved.
- Upon resolution, Product Support will provide final callback, verifying resolution.

Severity Guidelines

Aprisma's escalation procedure is a severity-based system. By classifying all incoming calls, Aprisma ensures the customer's support inquiries will be resolved in a timely and efficient manner. There are four possible classifications of an inquiry:

Severity 1:

Executive Management is notified of all Severity 1's upon creation of the inquiry.

- Customer is experiencing critical failure, performance or business impact issue with no immediate resolution available.
- The ATAC will work with the customer to resolve the inquiry.
- At the second hour, Product Support will be notified and consulted on the inquiry.
- At the fourth hour, Product Support takes ownership of the inquiry.
- At the sixth hour, the inquiry is escalated to Engineering and the VP of Service and Support and the VP of Engineering are notified.
- After 24 hours, Aprisma's CEO is notified.

Severity 2:

• Customer is experiencing major failure, performance or business impact issue with no immediate resolution available.

- The ATAC will work with the customer to resolve the inquiry.
- After one business day, Product Support will be notified and consulted on the inquiry.
- Product Support may request the inquiry be escalated at the time of consult.
- After two business days, Product Support takes ownership of the inquiry.
- Product Support will work with the customer to resolve the inquiry, or define the inquiry for escalation to Engineering.

Severity 3:

- Customer is experiencing minor failure, performance or business impact issue with no immediate resolution available.
- The ATAC will work with customer to resolve the inquiry.
- The TSE will work with the internal ATAC team and Product Support to resolve the inquiry.
- After 7 business days, Product Support takes ownership of the inquiry.
- Product Support will work with the customer to resolve the inquiry, or define the inquiry for escalation to Engineering.

Severity 4:

- Product enhancement/New Functionality requests.
- The ATAC will gather the customer's requirements and supporting data for escalation to Product Support.
- Product Support will work with the customer to determine if the request can be satisfied with current functionality.
- Product Support will work with the customer to further define the request and gather any additional information needed.
- Product Support will submit the request for a decision.
- Product Support will inform the customer of Aprisma's decision to implement or not implement the requested enhancement.
- Product Support will provide the customer with updates to ensure the customer is kept informed concerning the status of their enhancement request.
- 4. Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement Parts)

Aprisma Management Technologies will be providing individual responses for each of the above with the appropriate heading.

Equipment Warranty (Software Warranty)

Aprisma guarantees that all products it provides shall be new and un-used, will conform to its software specifications and be free from defects for a period of two (2) years from the date of installation, but no more than twenty-eight (28) months from the date of shipment.

Installation

This response has changed from our initial response in that Aprisma now offers installation services to assist our customers with the implementation of the purchased software. Aprisma offers a variety of services to support the implementation of SPECTRUM and related products. Our IM Consultants and Project Managers will work alone or with Aprisma System Integrators to manage and complete the installation and provide additional on-site, post-implementation support to give you a thorough understanding of your new SPECTRUM system.

http://www.aprisma.com/pro-services/implementations.shtml

The AprismaCares Professional Services and Consulting Group offers a variety of packaged service products and can also develop a custom offering to meet your company's specific needs. For further information on this or any other Aprisma service or product, visit our Web site at http://www.aprisma.com.

Training

Aprisma Management Technologies is providing the following URLs for your review. These URLs will give you a direct link to access information regarding our training programs. Aprisma offers training packs which allow our customers to purchase additional seats at reduced prices.

The first URL brings you to the home page and from there access the training pull down to review all training information. This URL is: http://www.aprisma.com/

The second URL provides access to our course descriptions. The URL is:

http://www.aprisma.com/training/coursedesc.shtml

Maintenance

Aprisma has created the AprismaCares Client Services program to ensure that your investment and satisfaction with the SPECTRUM® product suite is fully maximized.

As a SPECTRUM customer, you may take advantage of all the offerings from the Aprisma Services team. AprismaCares Client Services is here to help with on-site SPECTRUM experts, dedicated support engineers, proposal services and customization of the SPECTRUM solution to meet your unique needs.

To review the AprismaCares Client services program in detail visit the following URL. This URL provides information on the various programs offered by Aprisma. Select the "AprismaCares Maintenance/Support Services" link.

http://www.aprisma.com/support/clientservices.shtml

ATTACHMENT B

Standard Contract Terms and Conditions Western States Contracting Alliance (WSCA)

[Please Note: If there are revisions to this attachment, they are listed under Attachment A, Section D.7.]

1. PARTICIPANTS: Western States Contracting Alliance ("WSCA") is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

2. **DEFINITIONS**:

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

"Offer" or "Bid" or "Proposal" refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. "Bidder" or "Offeror" similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

"Permissive price agreement" means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

"Participating Addendum" means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

"Participating State" means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

- **3. QUANTITY ESTIMATES:** Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.
- 4. SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered
- 5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.
- 6. **SAMPLES:** Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.
- 7. CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise
- **8.** TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.
- 9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS: Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.
- 10. PATENTS, COPYRIGHTS, ETC: The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.
- 11. AWARD: Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and

responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

- 12. NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.
- 13. TERMINATION: Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order."

14. DEFAULT AND REMEDIES:

- A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:
 - (1) Nonperformance of contractual requirements; or
 - (2) A material breach of any term or condition of this contract.
- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 - (1) Exercise any remedy provided by law or equity;
 - (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
 - (3) Impose liquidated damages, as specified in the solicitation or contract;
 - (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.
- 15. LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

- 16. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.
- 17. **REPORTS:** The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.
- **18. HOLD HARMLESS:** The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.
- 19. ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 20. GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.
- 21. **DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 22. WARRANTY: As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the PURCHASING ENTITY apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their

advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the PURCHASING ENTITY has relied on the CONTRACTOR'S skill or judgment to consider when it advised the PURCHASING ENTITY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the PURCHASING ENTITY has not been warned. Remedies available to the PURCHASING ENTITY include the following: the CONTRACTOR will repair or replace (at no charge to the purchasing entity) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the PURCHASING ENTITY may otherwise have under this contract with respect to defects.

- 23. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.
- **24. ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.
- 25. NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and repots to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.
- 26. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- 27. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity

may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

- **28. PAYMENT:** Payment for completion of an contract is normally made within 30 days following the date the entire order id delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".
- 29. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
- **30. HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.
- 31. FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.
- **32. EXTENSION OF PRICES**: In the case of error in the extension of prices in the proposal, the unit prices will govern.
- **33. PROPOSAL PREPARATION COSTS**: WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.
- **34. CERTIFICATION REGARDING CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.
- 35. INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.
- **36. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cites, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

- **37. E-RATE COMPLIANCE:** Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and in accordance with any State and local government E-rate related requirement(s) of the authorized procuring agency.
- **38. CERTIFICATION REGARDING DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.
- **39. RECORDS ADMINISTRATION:** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.
- **40. AUDIT OF RECORDS:** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 41. PRICES AS CEILING: Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.
- 42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS: Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

Revision Date: April 2001

ATTACHMENT C

- 1. Spectrum Software License Agreement
- 2. Spectrum Service and Maintenance Agreement